IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)
Description of case

Criminal Revision No. 192/2001
(Old No. 607/1993)

Date of decision: 02.112004

For the approval of:-

Hon'ble Mr. Justice J. C. S. Rawat

- Whether the order/judgment should be sent to the reporters for reporting?

  (Yes)
- Whether the reporters be allowed to see the judgment? (Yes)

Dated 2.11.2004
LSR

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Revision No.192/2001
(Old No. 607/1993)

1. Hari Dutt Belwal
2. R. C. Sharma .....Revisionists

Versus

1. State
2. Mahipal Singh Bhainsara .....Respondents

Date of Delivery :- 02.11.2004

Hon'ble J.C. Rawat, J.

This criminal revision has been field against the order dated 27.3.1993 passed by Sri S.K. Kain, the then Munsif Magistrate, Didihat, District Pithoragarh in Criminal Case No.101/1993, summoning the revisionists under section 499/500 IPC on a complaint filed by the respondent no.2.

2. Brief facts of the case are that a complaint was failed before the learned Magistrate alleging therein that the respondent no.2-Mahipal Singh Bhainsara is village pradhan of Gramsabha Baltir P.O. Thal. On 27.12.1992 at about 5PM the revisionists and respondent no.2 met in a public place at a tea-stall and respondent no.2 enquired from the revisionists with regard to the meeting of the Teachers and Parents Association. It was further alleged in the complaint that both the revisionists stated as follows in the presence of so many people:-

> ''तुम फर्जी अध्यक्ष हो और यहॉ के आवाच्छित तत्व हो, तुम यह सब पूछने वाले कौन होते हो''

Thereafter, the revisionists threatened to beat the respondent no.2. The respondent no.2 has further stated in the complaint that due to above imputations his prestige had gone down in the eyes of the public.

Thereafter, the learned Magistrate proceeded with the matter under section 200, 202 Cr.P.C. The respondent no.2 was examined under section 200 Cr.P.C. and he had adduced the evidence of Khushal Singh and Shyamu Ram under section 202 Cr.P.C. Thereafter the Magistrate passed the impugned order on 27.3.1997 by which the revisionists were summoned under section 500 Cr.P.C.

3. Feeling aggrieved by this order, the revisionists has came up before this Court on the ground that the order of the Magistrate is bad in the eyes of law and the words spoken by the revisionists are not defamatory even if the allegations are taken to be true.

4. I have heard Sri B. S. Adhikari learned counsel for the revisionists and Sri Nandan Arya learned AGA.

5. The learned counsel for the revisionists has contended that the Magistrate has not applied his mind while issuing the process against the revisionists. The learned A.G.A. has refuted the contention. An extensive discretionary power is conferred upon the Magistrate and the magistrate should exercise this discretionary power within the four corners of the Code. The complainant should allege the fact which if relied upon would constitute the offence charged. The Magistrate has to consider the statement on oath recorded under sections 200, 202 Cr.P.C. and other evidence filed on behalf of the complainant. Thereafter, the Magistrate has to determine at the stage of issue of process is not the correctness, or the probabilities or improbabilities of individual items of evidence or disputable grounds or otherwise of a prima-facie case on the assumption that

what has been stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true. **{See Devendra Nath Bhattacharyaji Vs. State of West Bengal 1972 A.I.R. p/1607 SC}** It is not necessary to go into the detailed discussions on the merit and demerits of the case while issuing the process against the accused. It is sufficient that the Magistrate had considered the allegations in the complaint and the evidence given in support of the same and is satisfied that there are sufficient grounds for proceeding against the accused. The standard of scrutinizing the evidence at the stage of issuing the process is not the same as at the time of the framing of the charge or at the time of the passing final order of conviction or acquittal. The Magistrate will not see at this stage as to whether the accused will ultimately be acquitted or not. The Magistrate will only consider that there is a prima-facie case and there is sufficient ground to proceed further. The learned Magistrate had passed a detailed and speaking order and he had also applied his mind to the facts and circumstances of the case. The contention of the defence is not tenable.

6. The learned counsel for the revisionists further contended that the learned Magistrate has not conducted the enquiry as envisaged under section 202 Cr.P.C. and submitted the learned Magistrate should have made a thorough enquiry so that he may reach at a reasonable conclusion. The learned A.G.A. refuted the contention and submitted that the learned Magistrate had recorded the statement of the complainant under section 200 Cr.P.C. and other witnesses under section 202 Cr.P.C. The learned A.G.A.

further submitted that the enquiry conducted by the Magistrate is complete and absolute. The scope of the enquiry under section 202 Cr.P.C. is limited. The evidence of the complainant and witnesses completely supports the prosecution version. The complainant had deposed in his statement under section 200 Cr.P.C. that the revisionists made the imputations against the respondent no.2 in presence of many people at the public place that he is unwanted and farji president of Teacher & Parents Association. The witnesses under section 202 Cr.P.C. Khushal Singh and Shyamu Ram had stated in their statement that the revisionists uttered the word “farji” in their presence at a tea-stall in Thal market, which is a public place. The respondent-complainant had also supported the allegations made in the complaint. The Magistrate had made the enquiry as envisaged under sections 200, 202 Cr.P.C. The learned counsel also contended that the learned Magistrate had summoned the accused in a routine manner and he should have enquired as to whether the allegations are correct or not. The learned counsel for the revisionists in support of his argument has referred the decision in **Pepsi Foods Ltd. Vs. Special Judicial Magistrate 1998 (5) SCC p/749.** I have gone thought the said judgment in which it has been held “if we now refer to the facts of the case before us it is clear to us that not only that allegation against the appellants do not make out any case for an offence under section 7 of the Act and also that there is no basis for the complainant to make such allegations. The allegations in the complaint merely show that the appellants have given their brand name to “Residency Foods and Beverages Ltd” for bottling the beverage “Lehar Pepsi”. The complaint does not show what is the role of the appellants in the

manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturers of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information if from A.K.Jain who is impleaded as Accused 3. The preliminary evidence on which the first respondent relied in issuing summons to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both." IN that case, the proceedings under section 482 Cr.P.C. were quashed against the accused. In the instant case, there is prima-facie case against the revisionists.

7. The learned A.G.A. submitted that the revision is not maintainable. It has been held by the Hon'ble Apex Court in **Rajendra Kumar Sitaram Pande Vs. Uttam 1999 Cr.L.J. 1620** that the term 'interlocutory order' used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final. This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi final and, therefore, the revisional jurisdiction under section 397 could be exercised against the same.

8. In the instant case, the complaint filed by the respondent no.2 discloses the prima-facie case against the revisionists and therefore the learned Magistrate was fully justified to issue the process against the revisionists.

9. In view of the above, the revision lacks merit and is liable to be dismissed. The revision is dismissed accordingly.

(J. C. S. Rawat, J.)

Dated 02.11.2004

LSR